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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Jenny Lisette Flores, *et al*

Plaintiffs,

v.

William Barr, Attorney General of the
United States, *et al*

Defendants.

Case No. CV 85-4544-DMG (AGR_x)

**APPLICATION FOR LEAVE TO
FILE UNDER SEAL PORTIONS
OF EXHIBITS SUBMITTED IN
SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION AND CONTEMPT
ORDER SHOULD NOT ISSUE
AND MEMORANDUM IN
SUPPORT**

Hearing: None set

Dated: June 26, 2019

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CAUSE WHY A PRELIMINARY INJUNCTION AND
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TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION AND
CONTEMPT ORDER SHOULD NOT ISSUE AND MEMORANDUM IN
SUPPORT**

Plaintiffs submit this unopposed Application seeking leave from the Court to file under seal portions of Exhibits 1-19, 23, 25-62, and 64-67 ("Exhibits") in Support of Plaintiffs' Ex Parte Application for Relief, pursuant to Federal Rule of Civil Procedure 5.2(d) and Local Rule 79-5. *See* Echtman Seal Decl. ¶ 2 (table specifying information Plaintiffs seek to seal for each Exhibit). As required by Local Rule 79-5.2.2(a), Plaintiffs submit concurrently with this application the declaration of Elyse D. Echtman, a proposed order, and redacted and unredacted versions of the Exhibits.

The portions of the Exhibits that Plaintiffs seek to seal include:

- the full names of Class Members and/or their family members and sponsors,
- their alien registration numbers or case numbers,
- their health care information; and/or
- their full birth dates.

See Echtman Seal Decl. ¶ 2 (table specifying information Plaintiffs seek to seal for each Exhibit).

These Class Members are or recently were minors in the immigration detention custody of the Office of Refugee Resettlement (ORR). These youth have an interest in maintaining their privacy while in immigration custody and in their

1 private medical and mental health information.

2 **LEGAL STANDARD**

3 Because the public generally has a “right to inspect and copy public records
4 and documents, including judicial records and documents,” there is “a strong
5 presumption in favor of access to court records.” *Ctr. for Auto Safety v. Chrysler*
6 *Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (internal quotation marks and
7 citations omitted). Accordingly, “a court may seal records only when it finds a
8 compelling reason and articulate[s] the factual basis for its ruling, without relying
9 on hypothesis or conjecture.” *Id.* at 1096-97. Under this standard, the “party
10 seeking to seal a judicial record then bears the burden of . . . articulat[ing]
11 compelling reasons supported by specific factual findings . . . that outweigh the
12 general history of access and the public policies favoring disclosure, such as the
13 public interest in understanding the judicial process.” *Kamakana v. City & Cnty. of*
14 *Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal quotation marks and
15 citations omitted). The court must “conscientiously balance[] the competing
16 interests of the public and the party who seeks to keep certain judicial records
17 secret.” *Id.* at 1179 (internal quotation marks and citations omitted).

18 **ARGUMENT**

19 There are compelling reasons to seal the portions of the documents that
20 Plaintiffs seek to protect from public disclosure. These documents and the related
21 Motion contain highly personal information regarding the individual Class
22 Members, and disclosure of this information would cause them significant harm.

23
24 **I. Compelling Reasons Support the Sealing of the Identifying Information**
25 **of the Individual Class Members and Their Family Members and**
26 **Sponsors.**

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2 Plaintiffs' Ex Parte Application as well as the supporting Memorandum and
3 Exhibits implicate several highly private interests for the individual Class Members
4 who are identified in those documents, and thus protection of their identities and
5 those of their family members and sponsors is warranted.

6 First, the Ex Parte Application, Memorandum, and Exhibits address a
7 number of very sensitive and personal matters, including the past abuse, trauma,
8 and private mental and physical health information and treatment of Class
9 Members. Courts have recognized a constitutionally protected interest in avoiding
10 disclosure of such personal matters, including medical information. *Doe v. Beard*,
11 63 F. Supp. 3d 1159, 1166 n.4 (C.D. Cal. 2014) (collecting cases); *see also Globe*
12 *Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982) (finding that
13 "safeguarding the physical and psychological well-being of a minor" is a
14 compelling interest); *Eugene S. v. Horizon Blue Cross Blue Shield of N.J.*, 663 F.3d
15 1124, 1136 (10th Cir. 2011) (granting Plaintiff-Appellant's motion to file volume
16 of appendix under seal because "nearly every document in the volume at issue
17 includes the name of, and/or personal and private medical information relating to,
18 [Plaintiff-Appellant's] minor son."); *Webster Groves Sch. Dist. v. Pulitzer Pub.*
19 *Co.*, 898 F.2d 1371, 1376-77 (8th Cir. 1990) (affirming decision to seal court
20 records containing "testimony of psychologists and psychiatrists as to [child's]
21 mental status" to prevent child from being "stigmatized and humiliated . . .");
22 Order granting Motion to File Declarations Under Seal at 1, *Doe v. Shenandoah*
23 *Valley Juvenile Center Commission*, No. 5:17-cv-0097 (W.D. Va. Feb 26, 2018),
24 ECF No. 43 (granting motion to file declarations of immigrant youth under seal
25 because Plaintiffs established that the "information contained in such declarations,

1 including details regarding the declarants’ mental health, past abuse, and trauma, is
2 of a highly sensitive and personal nature . . .”). Disclosing the Class Members’
3 names in conjunction with this information would subject them to potential stigma
4 and humiliation. *See Vitek v. Jones*, 445 U.S. 480, 492 (1980) (noting that
5 compelled psychiatric treatment “can engender adverse social consequences to the
6 individual” that can “have a very significant impact on the individual.”) (citation
7 omitted).

8 Second, the Exhibits implicate the details of the Class Members’ immigration
9 detention and case numbers. Federal law and policy maintain personally
10 identifying information related to such matters as confidential, particularly for
11 minors in the custody of the U.S. Customs and Border Patrol and/or Office of
12 Refugee Resettlement. *See, e.g.*, 8 C.F.R. § 236.6 (prohibiting release of “the name
13 of, or other information relating, to” immigration detainees); 8 C.F.R. § 208.6
14 (maintaining confidentiality of asylum applications and related records). The U.S.
15 Department of Health and Human Services maintains self-described “strong
16 policies . . . to ensure the privacy and safety of unaccompanied alien children by
17 maintaining the confidentiality of their personal information.” U.S. Dept. of Health
18 & Human Services, Unaccompanied Alien Children Released to Sponsors by State
19 (June 30, 2017), [https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state)
20 [children-released-to-sponsors-by-state](https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state) (last accessed June 25, 2019). It explains,
21 “These children may have histories of abuse,” “may be seeking safety from threats
22 of violence,” or “may have been trafficked or smuggled.” *Id.* Accordingly, the
23 agency has recognized that it “cannot release information about individual children
24 that could compromise the child’s location or identity.” *Id.*

25 Further, the Class Members’ identifying information should also be protected

1 because the sensitive subject matter at issue – including their private mental health
2 and trauma information and immigration detention – is based exclusively on their
3 experiences as minors. Federal courts recognize the importance of protecting
4 minors’ identities and personal information in court proceedings. *Doe v.*
5 *Kamehameha Schs./Bernice Pauahi Bishop Estate*, 625 F.3d 1182, 1187 (9th Cir.
6 2010) (Reinhardt, J., dissenting from denial of reh’g en banc) (“The interest of
7 minors in privacy is greater than the public’s interest in learning their names, even
8 when there is no particular threat to the juvenile’s physical safety or wellbeing.”).
9 Courts consider the age of a party to be a “significant factor in the matrix of
10 considerations arguing for anonymity” based on a recognition of the “special
11 vulnerability” of minors. *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. 1981); *see also*
12 *Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 190 (2d Cir. 2008) (stating
13 that an important factor in the balancing inquiry is “whether the plaintiff is
14 particularly vulnerable to the possible harms of disclosure, particularly in light of
15 his age”) (internal citations omitted).

16 Finally, many of the Class Members address in their declarations negative
17 experiences that they have experienced in the care of the government contractors
18 who are acting as their physical custodians. Many of them remain in the custody of
19 these contractors, and public disclosure of their names could put them at risk of
20 retaliation. Thus, sealing the Class Members’ full names is necessary to protect
21 their highly personal information as well as to protect them from the risk of
22 negative reprisals from their custodians or former custodians.

23 To protect the Class Members’ identities effectively, it is also necessary to
24 protect the names and identifying information, such as the telephone numbers and
25 home addresses, of their family members and potential sponsors. Identification of

1 those individuals could lead easily to the identification of the Class Members.
2 Further, some of the Exhibits implicate personal information of the Class Members'
3 family members and potential sponsors, including their immigration status and
4 histories of trauma.

5 **II. Sealing of Full Birthdates also is Warranted.**

6 A number of the Exhibits also include the full birthdates of the Class
7 Members and other individuals. Federal Rule of Civil Procedure 5.2(a) restricts
8 parties from public filing of birthdates, other than the year of birth. Accordingly,
9 Plaintiffs seek to seal the month and day of individuals' birthdates.

10 **III. Plaintiffs' Sealing Request is Narrowly Tailored.**

11 Plaintiffs seek only a limited sealing order that permits them to file
12 unredacted versions of the Exhibits under seal and redacted versions of the Exhibits
13 in the public record. Other relevant information important to Plaintiffs'
14 presentation of the issues, including the content of the Class Members' statements
15 and other documents, would still be maintained in the public record, and the
16 Court's resolution of these matters will be public as well. Plaintiffs do not seek to
17 seal the entirety of the Class' members' declarations and related Exhibits, but rather
18 specific portions necessary to protect the highly confidential and personal
19 information of the individual Class Members. Accordingly, filing portions of the
20 Exhibits under seal is the least restrictive method of ensuring Plaintiffs' and their
21 family members' privacy while permitting the public access to the maximum
22 amount of information.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request leave to file under seal the complete, unredacted versions of the Exhibits and to file redacted versions of the Exhibits in the public record.

1 Dated: June 26, 2019

/s/PETER SCHEY
Attorneys for Plaintiffs

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